

REMARKS/ARGUMENTS

The claims are divided into the following Groups:

- Group I: Claim(s) 1-7, drawn to an indicator material for assessing body odor.
- Group II: Claim(s) 8-15, 25, and 31-33, drawn to a method of assessing effectiveness of a deodorant.
- Group III: Claim(s) 16-23 and 26, drawn to a method of assessing effectiveness of a deodorant.
- Group IV: Claim(s) 24, drawn to a method of producing an alcohol compound.
- Group V: Claim(s) 27-30, drawn to a kit for assessing body odor of a human.

In addition, an election of Species as follows, is required:

- Specie A: Indicator substance (1) described on page 11, lines 22-24, in the specification.
- Specie B: Indicator substance (2) described on page 12, lines 6-8, in the specification.
- Specie C: Indicator substance (3) described on page 12, lines 16-20, in the specification.
- Specie D: Indicator substance (4) described on page 13, lines 2-5, in the specification.
- Specie E: Indicator substance (5) described on page 13, lines 9-12, in the specification.

Applicants elect, with traverse, Group II, Claims 8-15, 25 and 31-33, for examination.

As a single disclosed specie, for examination purposes only, Applicants provisionally elect

Specie A:

Indicator substance (1) described on page 11, lines 22-24, in the specification.

At least Claims 8, 9, 10, 25 and 31-33 read on the elected species.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

“. . . while the use of a β -hydroxycarboxylic acid or an alcohol having a mercapto group is shared between the groups I-V, it does not offer a contribution over the prior art. See Natsch et al. (A specific bacterial aminoacylase cleaves odorant precursors in the human axilla) and Acuna et al. (US 6,805,893) which disclose said β -hydroxycarboxylic acid and said alcohol with a mercapto group in Fig. 1 and C2-5 respectively.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; . . .”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I and II with respect to 37 C.F.R. § 1.475(b)(1).

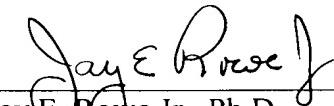
Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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